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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,658	09/17/2003	Friedrich W. Kuhne	25708-0038	7719

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EXAMINER

KIM, VICKIE Y

ART UNIT PAPER NUMBER

1618

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/049,658

**Applicant(s)**

KUEHNE, FRIEDRICH W.

**Examiner**

Vickie Kim

**Art Unit**

1618

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-28 is/are pending in the application.
- 4a) Of the above claim(s) 10-13, 15-17, 21-24 and 26-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-9, 14, 18-20 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Application***

1. Acknowledgement is made of amendment filed 11/10/2005. Upon entering the amendment, the claims 1-7 are canceled and new claims 8-28 are added.
2. The claims 8-28 are pending and presented for the examination.

### ***Election acknowledged***

3. Applicants' election of species, pancreatic carcinoma, is acknowledged. The restriction is made without traverse. Therefore, the restriction requirement is deemed to be proper and made FINAL.

Claims 8-9, 14, 18-20 and 25 read on the elected species. All remaining claims not drawn to the elected invention are withdrawn from further consideration as being non-elected.

### ***Claim objection***

4. The claims are objected to because of the following informalities: The claims fails to provide full chemical name for "DCC" which has been recited throughout the claims. Although the use of shortened name is permissible in the patent applications, it should be accompanied by full chemical name at once at least, so that there will be no uncertainty or confusion as to what is meant and its use in any manner which might adversely affect their validity. For instance, "DCC" can be understood as "Dextran-Coated Charcoal(US5658914)" or "dicyclohexylcarbodiimide(US5658995)" or "dichlorocyanurate" and so on. Appropriate correction(i.e. Deleted in colon carcinoma(DCC) ) is required.

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection which is necessitated by amended claims filed 11/10/2005.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8-9, 14, 18-20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuehne et al(CA1268714, 1990) in view of Kern et al(US 5712097).

The claims are drawn to a method of treating cancer which is characterized by a reduced expression of the DCC protein, comprising administering an aqueous solution comprising a stabilized chlorite solution.

Kuehne et al(CA'714, hereinafter) teaches a stabilized chlorite solution and its use in cancer treatment(e.g. metastatic solid tumors such as primary or metastatic adenocarcinoma, see abstract and page 1, last paragraph of English translated version)

The claims differ in that because they require pancreatic carcinoma.

Kern et al(US'097) teaches that a primary pancreatic carcinoma is adenocarcinoma that is associated with DCC, see example 1 at col. 17.

Thus, it would have been obvious to one of ordinary skill in the art at that time of the invention was made to substitute adenocarcinoma with pancreatic carcinoma and the recitation "the carcinoma characterized in DCC" is inherently possessed.

One would have been motivated to make such substitution, with reasonable expectation of success, because the effectiveness of chlorite solution against pancreatic cancer is well proven by CA'714, and it is always desired to extend the medical utility by substituting the effective therapeutic modality. Since the effectiveness is well proven and clearly suggested by CA'714, such substitution to include pancreatic carcinoma would increase industrial applicability and maximize the benefits of drug treatment against cancer therapy.

One would have been motivated to combine these references and make the modification because they are drawn to same technical fields (constituted with same ingredients and share common utilities, and pertinent to the problem which applicant concerns about. MPEP 2141.01(a).

### ***Conclusion***

5. No claim is allowed. Having carefully reviewed applicants' Request for Reconsideration, the examiner maintained the rejection in any respect.

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickie Kim whose telephone number is 571-272-0579. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

**VICKIE KIM**  
**PRIMARY EXAMINER**

Vickie Kim  
Primary Patent Examiner  
May 30, 2006  
Art unit 1618